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No. 85-1078

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ZAYLE A. BERNSTEIN,

Petitioner,

v.

PORTLAND SAVINGS AND LOAN ASSOCIATION,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Texas

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner has misstated the record in formulating Petitioner's issues and, as will be evidenced from the following argument, no issue is presented which warrants granting the Petition.

PARTIES

The names of the parties and their respective attorneys in these proceedings are as follows:

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ZAYLE A. BERNSTEIN

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STATEMENT

The facts of the case are stated fully in the decision of the Court of Appeals (Petitioner's Appendix, 9-24).

REASONS FOR DENYING THE PETITION

Petitioner simply failed at the hearing to introduce proper evidence which would support the position that Petitioner has taken in his Application for Writ of Cer-

tiorari. Petitioner disregards the fact that the Court of Appeals found that Petitioner introduced no evidence of his compliance with the Florida statute requiring registration of a fictitious name and was therefore estopped to deny that Petitioner was a partner of Sidney T. Bernstein. Further, in complaining to this Court that Petitioner is merely a stockholder of a corporation, Petitioner ignores both the fact that there was evidence of the Bernsteins' partnership and evidentiary findings by the Court of Appeals that Petitioner did not meet his burden of proof to show that he was not a partner of Sidney T. Bernstein. Petitioner raises nothing of a constitutional dimension to attack this finding by the Court of Appeals. As the Court of Appeals held, Petitioner simply failed to meet his burden of proof; Petitioner does not complain that this holding violates Petitioner's right to due process or is not "fundamentally fair". *See Lassiter v. Department of Social Services of Durham County*, 452 U.S. 18, 24-25 (1981). Consequently, the first issue asserted by Petitioner is not presented by the record of this case.

Petitioner's issue is not only unsupported by the record, but is also contrary to the law. The Federal Courts of Appeal have been consistent in holding that in assessing personal jurisdiction, the courts may look to contacts between the forum and the agents of defendant. See *Maritime International Nominees Establishment v. Republic of Guinea*, 693 F.2d 1094, 1105 (1st Cir. 1982), *cert. denied*, ____ U.S. ____, 104 S.Ct. 71 (1983); *Texas Trading & Milling Corporation v. Federal Republic of Nigeria*, 647 F.2d 300, 314-315 (2nd Cir. 1981), *cert. denied*, 454 U.S. 1148 (1982); and *Gelfand v. Tanner Motor Tours Limited*, 385 F.2d 116, 120-121 (2nd Cir. 1961), *cert. denied*, 390 U.S. 996 (1968).

As to Petitioner's complaint of the Court of Appeals' finding of waiver, "what acts of the defendant shall be

deemed a submission to [a court's] power is a matter upon which States may differ." See *Insurance Corp. of Ireland, Ltd., et al. v. Compagnie des Bauxites de Guinee*, 102 S.Ct. 2099 (1982); and *Chicago Life Insurance Company, et al. v. Bertha R. Cherry*, 244 U.S. 25 (1917).

In the instant case, Petitioner failed to file pleadings subject to the special appearance and requested a hearing on a matter pertaining to the merits before the special appearance was heard. The holding by the Court of Appeals that such acts constituted submission to the court's power does not amount to a denial of due process of law. *Chicago Life Insurance Company, et al. v. Bertha R. Cherry*, 244 U.S. 25 (1917).

CONCLUSION

For the reasons set forth herein the Petition for Writ of Certiorari to the Court of Appeals of Texas should be denied.

Respectfully submitted,

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